IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2480 OF 2007
IN
FIRST APPEAL NO.109 OF 1994

Mr.Ivan Punnakattuchery. ... Applicant/Appellant

v/s.

Mr.Pyarali Hari Hamid. ... Respondent

Ms.Rita Bhatia i/by Mr.V. Jaganathan for Applicant.

Mr.V.Y. Sanglikar for Respondent.

CORAM : SMT. ROSHAN DALVI, J.

DATED : 27th June , 2007

P.C. :

1. There has been an unending litigation history in the life of the Respondent, who sued initially in 1963, for a decree against the Defendant in the Suit, who is the father of the Applicant-Appellant herein. The suit was on trespass. The Applicant's father was declared

trespasser. He was directed to vacate the suit premises. A First Appeal against that judgment was dismissed. A Letters Patent Appeal filed against that order was also dismissed.

2. An undertaking was thereafter given by the father of the Applicant that he would vacate the suit premises within a specified time. His possession was protected. The undertaking was not filed. A SLP was filed instead. The SLP was dismissed.

3. Thereafter the Applicant, who is the son of that Defendant, obstructed the execution of the decree. The obstructionist proceedings were heard and an order came to be passed thereon which is impugned in this Appeal. The Appeal has been admitted today. This Application is for stay of the execution essentially of the judgment in the suit in 1963. The four Courts have consistently held in favour of the Respondent herein, who is the Plaintiff in the initial suit.

4. The case of the obstructionist is that a Leave and Licence agreement is executed by the son of the original contractual tenant, who has since expired, and (who had later surrendered the premises to the landlord) in favour of the Respondent herein. The son is stated to have executed the Leave and Licence agreement in 1985. Since no party can transfer any title in the immovable property better than that he has,it would have to be shown by the Applicant as to what right or title the son of the earlier contractual tenant had to permit the Applicant to live in the premises which was pending litigation since 1963.

5. The party, who executed the Leave and Licence agreement, under which the obstructionist claims his right, has not been examined in the trial Court. The Applicant's Advocate states that because he was then not in Mumbai, the lawyer, who is stated to have drafted the Leave and Licence agreement, and

witnessed it, has been examined to prove the truth of the contents of the document The prime requirement of leading direct oral evidence for proving the document relied upon by the party in the litigation is not satisfied. The law as laid down in the case of **Omprakash Berlia & anr. vs. Unit Trust of India reported in AIR 1983 Bombay 1**, for proving the contents of the document and the truth of the contents of the document is not satisfied. Consequently, the very right claimed by the Applicant under the document relied upon by him cannot be seen.

6. It would be most inequitable to stay the execution of the impugned order. The Application for stay is refused.

7. The Civil Application stands disposed of accordingly.

(SMT. ROSHAN DALVI, J.)